

Exhibit

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
FLEMING COMPANIES, INC.,) Case No. 03-10945 (MFW)
ET AL.,)
)
Debtor.) Wilmington, Delaware
) August 28, 2006
)

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Jones - Argument

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1 CLERK: All rise. You may be seated.

2 THE COURT: Good morning.

3 MS. JONES: Good morning, Your Honor. For the
4 record, Laura Davis Jones of Pachulski, Stang, Ziehl, Young,
5 Jones & Weintraub on behalf of the PCT. Your Honor, if I may
6 refer to the Court to the amended agenda for today's hearing,
7 matters 1 through 12, Your Honor, are continued as noted on the
8 agenda.

9 Matter 13, Your Honor, the PCT's 58th omnibus
10 objection to claims, as noted in the agenda, the Charlie C's
11 IGA has advised us that they do not oppose the relief
12 requested. So, we will submit an order subsequently no that
13 under certification of counsel. And, the balance of those
14 matters, Your Honor, have been continued, and we'll submit an
15 order continuing them as well.

16 THE COURT: All right.

17 MS. JONES: Your Honor, before I yield the podium, I
18 would note, Your Honor, that, with respect to matter 16, the
19 PCT's objection to Munafo, the parties have agreed to continue
20 that to the September 22 hearing. Just for Your Honor's
21 information, we're continuing in mediation in that matter and
22 we'll have mediation again later this month -- I guess, the
23 beginning of next month.

24 THE COURT: Okay.

25 MS. JONES: And, Your Honor, matters 17 and 18 are --

Jones / Carignan - Argument

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1 have both been settled. Your Honor, we need to work through
2 the documentation, and we'll submit proposed forms of order
3 under certification of counsel once the parties work those
4 orders out.

5 THE COURT: Okay.

6 MS. JONES: Your Honor, with that, I'm going to yield
7 to counsel with respect to number 14, the PCT's 56th omnibus
8 objection.

9 MR. CARIGNAN: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. CARIGNAN: James Carignan of Pepper Hamilton
12 appearing today on behalf of the post confirmation trust. Your
13 Honor, the 14th matter on the agenda is the PCT's 56th omnibus
14 objection to claims. This matter has been resolved, Your
15 Honor, with respect to all of the claims except those of Mrs.
16 Cubbinsons Foods, which is a scheduled claim, and two filed
17 claims of American Nutrition.

18 The parties have agreed, with respect to the Mrs.
19 Cubbinsons' claim, to continue the hearing on this matter until
20 the next omnibus date. But, we would like to proceed on an
21 uncontested basis today as against the American Nutrition
22 claims.

23 Your Honor, American Nutrition filed claim number
24 13852 and asserted a priority claim in the amount of roughly
25 \$16,000. We rec -- we seek to reclassify and allow this claim

Carignan - Argument

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1 as a general unsecured claim. Your Honor, the debtor's books
2 and records indicate that there were no post petition
3 transactions that would support a finding of administrative
4 priority for this claim. And, in fact, if Your Honor will
5 reference the schedule appended to that claim, it appears to
6 concede that the liability asserted all relates to pre-petition
7 transactions between these parties.

8 THE COURT: All right. Anybody wish to be heard on
9 that? All right. I will sustain the objection.

10 MR. CARIGNAN: Thank you, Your Honor. Claim 13851 is
11 the claim of American Nutrition Parent Co. It asserts an
12 unsecured claim in the amount of approximately \$48,000, but
13 does also include an administrative component in the amount of
14 approximately \$56,000.

15 We also seek to reclassify and allow this claim as a
16 general unsecured claim in the aggregate amount of these two
17 components. As with the previous claim, Your Honor, it does
18 not assert any specific legal basis for priority, and the
19 schedule appended to the claim concedes that these are all pre-
20 petition transactions save for one invoice asserted in the
21 amount of \$165.

22 However, Your Honor, the debtor's books and records
23 indicate that that invoice also pertains to a pre-petition
24 transaction. And, upon the affidavit in support of this
25 objection, we respectfully request that this claim be

Carignan / Brady - Argument

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1 reclassified as general unsecured.

2 THE COURT: All right. I will sustain the objection.

3 MR. CARIGNAN: Thank you, Your Honor. With that, I
4 will yield the podium back to Ms. Jones.

5 THE COURT: Do have a form of order for me?

6 MR. CARIGNAN: I do not. I was -- I was intending to
7 submit it under certification of counsel, if that's acceptable.

8 THE COURT: That's fine.

9 MR. CARIGNAN: Thank you, Your Honor.

10 MS. BRADY: Good morning, Your Honor. Erin Brady for
11 Kirkland & Ellis. And, I'm going to address the 15th matter on
12 the agenda, the PCT's objection to Mr. Berry's administrative
13 claims. As we said in our papers, unless the Court is prepared
14 to rule against Mr. Berry on the attorney's fee claims, claims
15 that he actually never asserted in his proofs of claims
16 themselves, we think that the claim objection should be
17 continued pending the Hawaii Court's decision on the pending
18 attorney's fees motion. I guess, unless the Court has
19 immediate questions, I can walk through a synopsis of the
20 Hawaii litigation.

21 THE COURT: You don't have to. I'm wondering why I'm
22 here if the Hawaii litigation isn't final, if you will.

23 MS. BRADY: We relit -- well, we were -- back in
24 October of 2005, we were before the Court on the claim
25 objection on -- in the first instance. The Court asked the PCT

Brady / Hogan - Argument

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1 to relist the claim objection at 30 days after the Hawaii
2 verdict was entered. So, we did that. Immediately then we
3 continued the objection out to August at Mr. Hogan's request.
4 And, as I said, the PCT agreed to do that without issue.

5 We contacted Mr. Hogan -- that date was not set in
6 stone. We contacted Mr. Hogan early this month and asked him
7 if he wished to continue the objection. Instead of responding,
8 he filed his response. And, we have subsequently asked him
9 several times since then to continue the objection because it's
10 not ripe. And, he has refused and insisted that we go forward
11 today.

12 THE COURT: All right. Well, let me hear from Mr.
13 Hogan for Mr. Berry.

14 MR. HOGAN: Good morning, Your Honor. Timothy Hogan
15 on behalf of Mr. Berry. Your Honor, the story that you've
16 heard from counsel is not the way it went. We -- I was forced
17 to file an objection. A costly amount of attorney time I
18 expended. The PCT's plan in this case from the beginning has
19 made it as expensive and as difficult for Mr. Berry as
20 possible.

21 We asked them at the very beginning to continue it
22 and to -- essentially until it moved on. They would not agree
23 to that. They now claim that they've been willing to do a lot
24 of things that they weren't willing to do when they were
25 talking to me.

Hogan - Argument

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1 THE COURT: Well, when did -- did they talk to you
2 about continuing today's hearing?

3 MR. HOGAN: They have -- they have attempted to
4 continue this -- today's hearing under conditions that were
5 unacceptable. They continue to refuse to accept the idea that
6 the Hawaii litigation will be finished when all appeals are
7 final. They -- and, in all the discussions with them, they
8 would not ever mention the word appeal in their willingness to
9 continue.

10 They want to have it -- at the moment there's an
11 order in Hawaii on fees, they want it over at that moment.
12 And, they may appeal the fee order. But, they'll be protected
13 in doing so, but not Mr. Berry. And, it's inequitable, Your
14 Honor.

15 THE COURT: Well, why don't I just say this. I'll
16 continue this until there's a final order in Hawaii?

17 MR. HOGAN: And, that's -- that would be fine with
18 us, Your Honor.

19 THE COURT: All right.

20 MS. BRADY: Your Honor, just to clarify, is that a
21 final non-appealable order out of the Appellate Courts or would
22 that be --

23 THE COURT: Out of the last Court that has
24 jurisdiction in Hawaii.

25 MS. BRADY: Okay.

Haskins / Butcher - Argument

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1 THE COURT: How's that?

2 MS. BRADY: Thank you, Your Honor.

3 MR. HOGAN: Thank you, Your Honor.

4 MS. JONES: Your Honor, I think that brings us then
5 to matter 19 on the agenda, which was the scheduling conference
6 regarding the PCT vs. C&S Acquisition and C&S Wholesale
7 Grocers. And, I'll yield to counsel, I believe, on the phone.

8 THE COURT: Okay.

9 MR. HASKINS: This is Steve Haskins for Kirkland &
10 Ellis -- with Kirkland & Ellis for the PCT. And, I believe the
11 Court has two scheduling orders in front of it. And, --

12 THE COURT: Yes.

13 MR. HASKINS: -- we're just coming before you, Your
14 Honor, with a request to expedite discovery and to move this
15 schedule forward as quickly as possible.

16 THE COURT: And, the other side?

17 MS. BUTCHER: Good morning, Your Honor. Rebecca
18 Butcher on behalf of C&S Acquisition. This matter has -- began
19 as a complaint simply between PCT and C&S. C&S is seeking to
20 bring in a third party, The Grocer Supply Company, Inc., to
21 whom the obligations under the APA were transferred. Grocer
22 Supply's answer deadline to our third party complaint is today.

23 At this point, we're not sure what issues Grocer
24 Supply plans to raise in response to our complaint. We've had
25 some discussions with counsel for the other side in which they

Butcher / Duban - Argument

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1 indicate they may be raising jurisdictional arguments. They
2 may be raising other counterclaims unrelated to the issue that
3 was brought up in the initial complaint. And, for that reason,
4 we're not sure that an expedited schedule is going to be
5 appropriate.

6 Frankly, until, I guess, we know where Grocer Supply
7 is going to come out with their response, we think it may be
8 best to wait until their initial scheduling conference on
9 September 22nd to enter a scheduling order that's going to
10 affect all of the parties.

11 THE COURT: Any objection to that?

12 MR. HASKINS: No. We'd like to meet with Grocer
13 Supply as well before that, and we can talk with them.

14 THE COURT: All right. Let's do that.

15 MS. BUTCHER: Thank you, Your Honor.

16 MR. HASKINS: Thank you.

17 MS. JONES: Your Honor, that brings us to the last
18 matter on the agenda, which is the RCT's second and final
19 status report. And, I believe Ms. Duban is on the phone.

20 MS. DUBAN: Thank you. Good morning, Your Honor.
21 Janice Duban from DLA Piper representing the Reclamation
22 Creditors Trust. Also on the line with me is Mr. Curtis
23 Marshall from Sara Lee Corp. who is the chairperson of the
24 Reclamation Creditors Trust.

25 Your Honor, we had intended to be either present in

Duban - Argument

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1 court or on a -- on this call in connection with the PCT and
2 RCT's joint motion regarding their wind down settlement
3 agreement, your Honor having granted that motion in advance of
4 the hearing. The status report remained on the call, so we
5 thought we should be on to answer any questions the Court may
6 have. But, that's the only purpose of our presence.

12 MS. DUBAN: Yes. Thank you, Your Honor. I guess we
13 are.

14 THE COURT: All right.

15 MS. JONES: Your Honor, we have no further matters
16 today.

THE COURT: All right. We'll stand adjourned.

18 MS. JONES: Thank you very much.

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C E R T I F I C A T I O N

I, Frances L. Maristch, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

DATE

FRANCES L. MARISTCH